

CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Adoption of Resolution of Authority and Resolution of Public Interest and Necessity, thereby formally Authorizing the Acquisition of Property through the Eminent Domain Process (Killelea Substation Expansion – 541 E. Locust Street – Perlegos)

MEETING DATE: August 21, 2002

PREPARED BY: Randall A. Hays, City Attorney

RECOMMENDATION: That the City Council adopt Resolution of Authority and Resolution of Public Interest and Necessity, thereby formally authorizing the acquisition of property through the eminent domain process.

BACKGROUND: The purpose of this agenda item is twofold.

First, it is designed to provide the property owner the opportunity to appear and be heard on those topics contained in the Code of Civil Procedure (CCP) §1240.030. This requirement to afford the property owner this opportunity to be heard is found in CCP §1245.235.

The topics found in CCP §1240.030 that may be addressed by the property owner are as follows: a) does the public interest and necessity require the project? b) is the project planned or located in the manner that will be most compatible with the greatest possible good and the least private injury? and c) the property sought to be acquired is necessary for the project. The amount of compensation to be paid for the property is not a proper subject for this hearing. A property owner will often bring compensation up however.

In order to appear and be heard as outlined in the previous paragraph, a property owner is required to file a written request to appear within fifteen (15) days after the Notice of Hearing was mailed. Failure to file such a request, results in a waiver of the right to appear and be heard (CCP §1245.235 (b)(3)). The property owners, Pete and Helen Perlegos were notified of this requirement in the letter sent to their Attorney. A copy of that letter is attached. A written request to appear had not been received at the time this memo was completed.

The second purpose is to adopt a resolution establishing the need of the City to exercise its power of eminent domain. By doing so, the Council establishes clear statutory authority upon which the use of the power of eminent domain can be based. Streets and Highways Code §4090 and Government Code §37350.5, clearly set forth that the acquisition of property for Electric Substation expansion purposes is authorized.

APPROVED: _____



H. Dixon Flynn, City Manager

As can be seen from this memo the eminent domain process is governed by express statutory provisions. CCP §1245.240 specifically requires that a resolution of public interest and necessity be adopted by a two-thirds vote of all the members of the City Council. Since two-thirds of five is a number greater than three, it takes four affirmative votes to adopt the required resolution.

In addition to the attached letters, you will find a memo from Rad Bartlam, Community Development Director, discussing the project and the need for the project as well as a memo from the Electric Department setting forth the technical basis for the needed substation expansion. Staff will make a short presentation relative to the project.

FUNDING: Not applicable.

Respectfully submitted,



Randall A. Hays, City Attorney

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221 WEST PINE STREET
P.O. BOX 3006
LODI, CALIFORNIA 95241-1910
(209) 333-6701
(209) 333-6807 FAX

CITY OF LODI
CITY ATTORNEY'S OFFICE

RANDALL A. HAYS
City Attorney
D. STEPHEN SCHWAHAUER
Deputy City Attorney



August 2, 2002

CERTIFIED MAIL

Ms. Julie Y. Mar-Spinola
2325 Orchard Parkway
San Jose, California 95131

Re: Acquisition of 541 E. Locust Street
APN 043-202-14

Dear Ms. Mar-Spinola:

The purpose of this letter is to advise you that the City Council of the City of Lodi, at its regular meeting of August 21, 2002, will consider the adoption of a Resolution of Public Interest and Necessity regarding the acquisition of the above-described property. The proposed Resolution is enclosed with this letter. The purpose for which the property acquisition is being considered is the expansion of an electric substation.

The effect of the adoption of the referenced Resolution would be to authorize the acquisition of the fee title to the property described, through the eminent domain process. You have the right to appear and be heard on the matter considered by the resolution. Those matters to be heard are stated in California Code of Civil Procedure, §1240.030. Please be advised that your failure to file a written request, with this office, to appear and be heard within fifteen (15) days after this letter was mailed will result in waiver of the right to appear and be heard.

Should you have any questions regarding this matter please contact this office.

Sincerely,

RANDALL A. HAYS
City Attorney

RAH/pn

cc: Dixon Flynn
Rad Bartlam
Richard Prima



MEMORANDUM, City of Lodi, Community Development Department

To: City Attorney
From: Community Development Director
Date: August 6, 2002
Subject: Property Acquisition – 541 East Locust Street

AUG 08 2002
CITY ATTORNEY'S OFFICE

As you have requested, the following memorandum describes the subject property as well as the general neighborhood characteristics in and around East Locust Street.

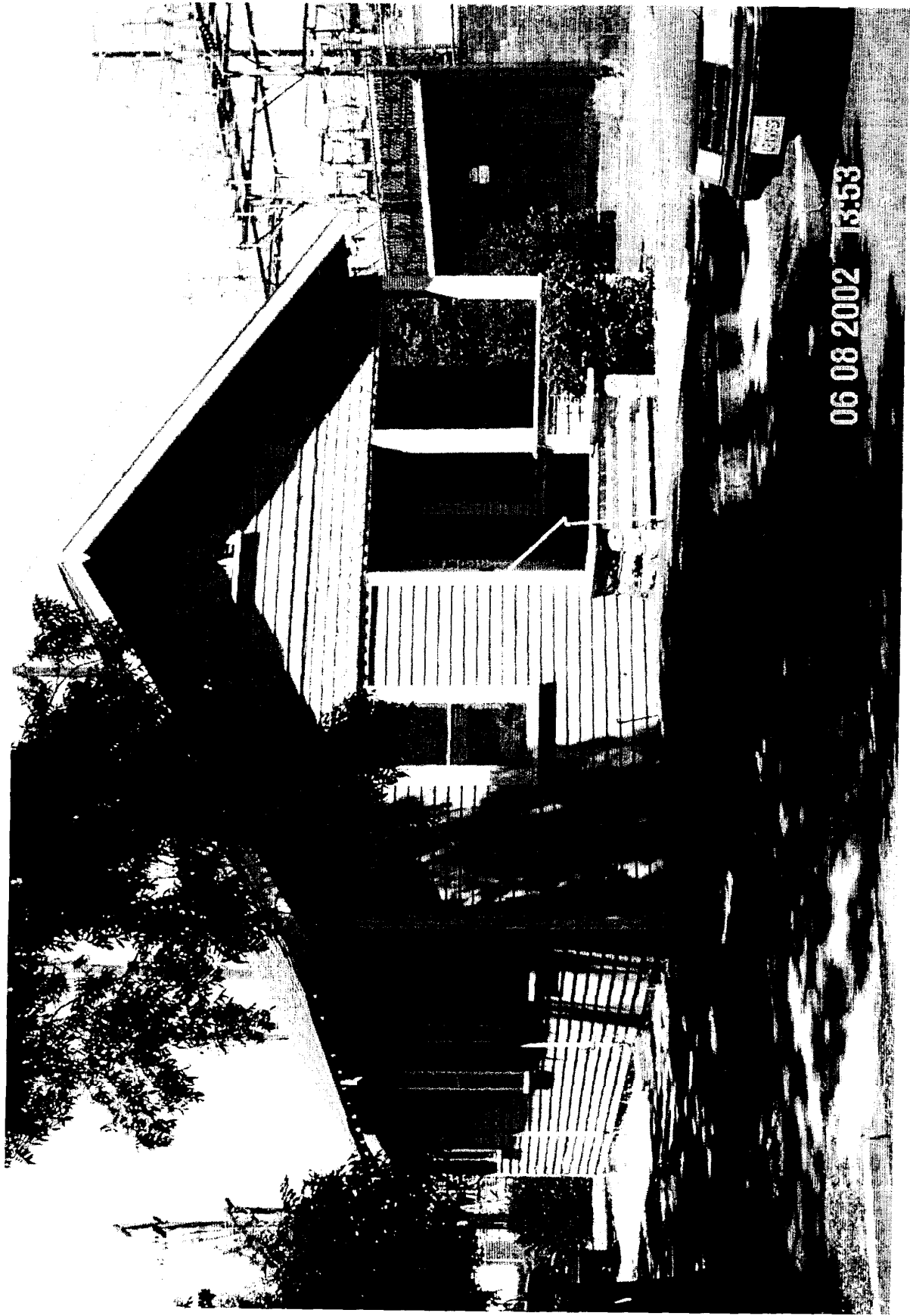
The property at 541 East Locust Street is 8,500 square feet in area. This lot size is consistent with the area and dimensions of the single family residential area generally bordered by Cherokee Lane, Lodi Avenue, Washington Street, and Lockeford Street. The area, immediately to the north, across the alley, is designated as M-1, light manufacturing. Improvements on the site are an approximate 882 square foot residence and a 144 square foot shed.

Properties adjacent to the subject site are developed as follows:

East: City of Lodi Killelea Electric Sub-Station
South: Six unit apartment building
West: Two detached single family dwellings
North: Pacific Gas & Electric (PG&E) Cherokee Electric Sub-Station

The neighborhood is designated by the City's General Plan as Eastside Residential and has a zoning designation of R-1*, Residential Single Family, Eastside. The General Plan and zoning are consistent with each document. The R-1* zoning designation allows one family dwelling on parcels with a minimum of 4,000 square feet. Further to the east is the Cherokee Lane commercial district.

The residential area that this property is a part dates back to some 70-80 years. Many of the structures, including the subject, show signs of age, deferred maintenance and deterioration. As can be seen from the photograph of the dwelling existing on site, there appears to be a sagging porch at the southeast corner of the structure. From a period between the 1960's and 1980's, multiple family dwellings were allowed in this area. Since 1988, the existing zoning has been in place and multiple dwellings on the same site are no longer permitted.





ELECTRIC UTILITY DEPARTMENT

Memorandum

AUG 07 2002

CITY ATTORNEY'S OFFICE

TO: Randall Hays, City Attorney
FROM: Hans Hansen, Manager, Engineering and Operations *HH*
DATE: August 7, 2002
SUBJECT: Killelea Substation Reconstruction Project

The Killelea Substation, as it exists today, was constructed during the 1960ies. The 12 kV section is a metal clad type enclosed switchgear of which the majority was installed in 1961 with an expansion added in 1965. The transformers and the 60 kV structure were added in 1968.

The manufacturer of the 12 kV metal clad equipment is no longer in business making parts extremely difficult to locate. The design of this switchgear is such that a failure of one portion of the insulated bus likely would escalate throughout the entire switchgear making a failure catastrophic resulting in a total loss of the station. The age and condition of the insulating material makes the likelihood of a failure greater with each passing year. The 60 kV bus structure was the interconnection facility as well as the main 60 kV distribution structure prior to the construction of Industrial Substation. A large portion of this structure is no longer needed and adds unnecessary exposure to the City's electric system. When Industrial Substation was constructed in 1991-93 it was envisioned that Killelea Substation would be reconstructed in the future as a smaller substation, both physically and electrically. However, with the significant industrial growth on the east side of the City, this station must remain at the current capacity level and will continue to be a vital part of the City's electric system. Therefore, to remain a safe, reliable and dependable substation reconstruction will be necessary.

At the meeting of June 7, 2000, the City Council authorized a study by Power Engineers, Inc. to identify and evaluate various options for reconstruction of this facility as well as to determine the condition of the existing power transformers. The testing of the transformers indicated more than sufficient remaining life to economically utilize them in the reconstruction project.

A number of options regarding the substation design were studied. These options included different technologies and different configurations for the substation. Based on various criteria, by the City, such as cost, operating flexibility, maintenance, reliability, longevity, equipment access with minimum electric interruptions and appearance one option emerged as the preferred solution. This option, besides being the lowest cost option, utilizes conventional open bus, very similar to the arrangement and operation of all other existing substations in the City's system. The advantages to the City with the preferred option include: familiar look and feel for operators, conventional construction techniques, no special tools and training required, simple and flexible operation of equipment and all equipment is visible to operating personnel. The preferred option (open bus) would also minimize the City's investment in spare parts, special tools and equipment as well as personnel training, both initial and periodic refresher. These

Killelea Substation Reconstruction Project (continued).

items already are in place for the existing substations and the new Killelea Substation would be included without additional investment.

This recommended option will require acquisition of property in order to obtain 1) the necessary access to the various components with proper clearances, a City requirement, resulting in the highest level of reliability, serviceability and minimum restoration time during a failure, 2) the safest possible work environment and 3) to minimize the visual impact of the substation.

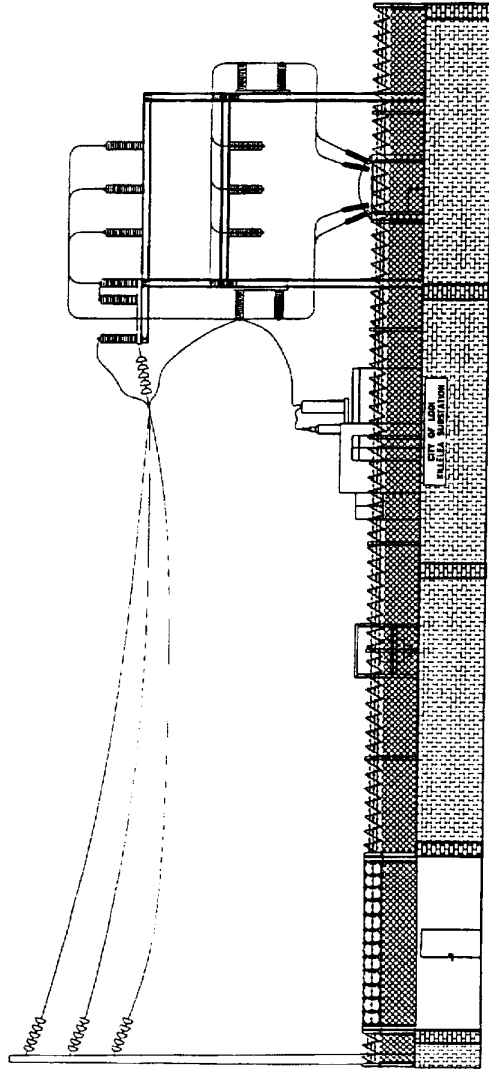
The existing 38 ft. tall lattice steel 60 kV structure, originally constructed to serve as the City's main 60 kV distribution facility, will be removed and replaced with three individual 27 ft. tall tubular steel support structures, appearing much like an inverted "U". The new 60 kV bus will be located further (an additional 6+ ft.) away from the perimeter fence to improve safety for both the public and operating personnel as well as minimizing the visual impact.

A masonry block wall will be constructed around the entire substation. The masonry wall will minimize the required property since this type of fencing can be placed very near to the property line and still meet the requirements of the touch potential. Other types of fencing, like chain-link require the ground grid to extend 5 – 6 ft. past the fence line to eliminate hazards.

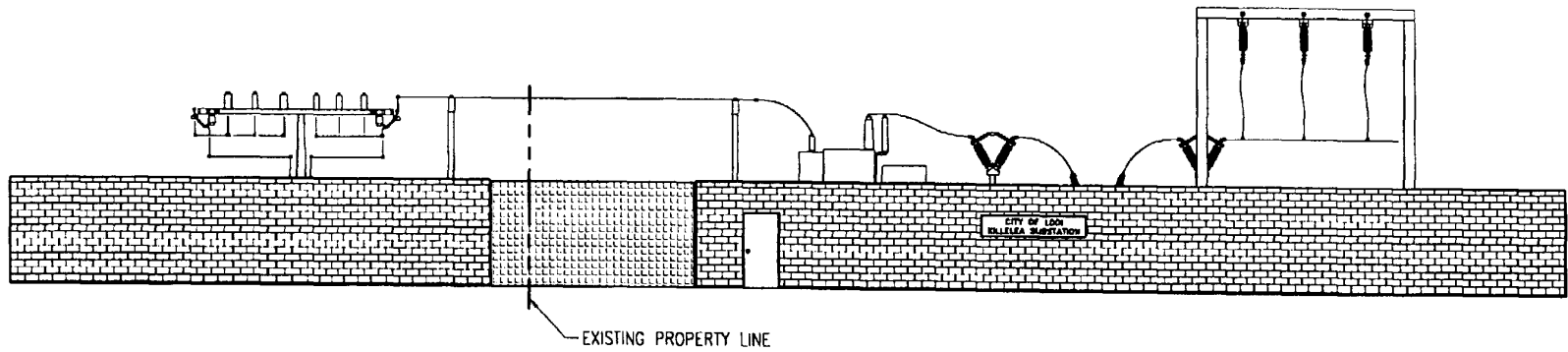
Relocation of the substation to a different site was considered. However, a suitable site where the 60 kV transmission loop and the 8 – 12 kV distribution feeders can be routed to is not available.

Attachment

c: A. Vallow, Electric Utility Director
R. Bartlam, Community Development Director
M. Grandi, Manager, Electric Services



EXISTING VIEW
FROM LOCUST STREET
KILLELEA SUBSTATION



PROPOSED VIEW
FROM LOCUST STREET
KILLELEA SUBSTATION

When Recorded, Return to:
City of Lodi
City Clerk's Office
P.O. Box 3006
Lodi, CA 95241-1910

RESOLUTION NO. 2002-178

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
LODI FINDING THAT PUBLIC INTEREST AND NECESSITY
REQUIRE THE ACQUISITION FOR ELECTRIC SUBSTATION
EXPANSION PURPOSES PROPERTY OWNED BY PETE AND
HELEN PERLEGOS, COMMONLY REFERRED TO AS
ASSESSOR'S PARCEL NUMBER 043-202-14
(541 E. LOCUST STREET)

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BE IT RESOLVED by the City Council of the City of Lodi (hereinafter referred to as "City") as follows:

Section 1. The City finds and determines that public interest and necessity require the expansion of its Killelea Substation, part of the Electric System of the City of Lodi, through the acquisition for such purpose, the fee title interest of the real property owned by Pete and Helen Perlegos, commonly referred to as APN 043-202-14.

Section 2. Section 37350.5 of the California Government Code and California State Constitution, Article II, §9 authorizes the City to acquire by eminent domain property for Electric Substation expansion purposes.

Section 3. An offer required by §7267.2 of the Government Code has been made to the owners of record of the real property sought to be taken by these eminent domain proceedings.

Section 4. The City finds and determines that the subject project has been planned and is to be located in the manner that will be most compatible with the greatest public good and the least private injury.

Section 5. The City finds and determines that the acquisition of the real property interests depicted in Exhibits "A" and "B" attached hereto, situate in the City of Lodi, County of San Joaquin, State of California, are necessary for the construction and maintenance of the aforesaid public improvements, and the taking of said real property interest is necessary therefor.

Section 6. The City hereby ratifies the Categorical Exemption prepared for this project per the California Code of Regulations, Title 14, Chapter 3, Article 19, §15301 showing that it has no substantial impact upon the environment and that an environmental impact report is not necessary.

Section 7. The City Attorney of the City of Lodi is hereby authorized, empowered, and directed to perform as follows:

- a. Commence an action or actions in eminent domain in the Superior Court of the State of California, County of San Joaquin, in the name of the City of Lodi to acquire necessary real property interests; and
- b. To incur in the name of the City of Lodi, and on behalf thereof, all obligations and expenses necessary to acquire the above-mentioned real property interests.

Section 8. The City Clerk of the City of Lodi is hereby directed to cause a certified copy of this Resolution to be recorded in the office of the San Joaquin County Clerk/Recorder.

Dated: August 21, 2002

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I hereby certify that Resolution No. 2002-178 was introduced and read by the City Council of the City of Lodi in a regular meeting held August 21, 2002, and was duly adopted at said meeting by a four-fifths vote as follows:

AYES: COUNCIL MEMBERS – Hitchcock, Howard, Land, Nakanishi, and Mayor Pennino

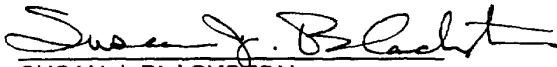
NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None


ABSTAIN: COUNCIL MEMBERS – None


PHILLIP A. PENNINO, Mayor
City of Lodi

Attest:


SUSAN J. BLACKSTON
City Clerk

APPROVED AS TO FORM:


RANDALL A. HAYS
City Attorney

2002-178

EXHIBIT A

LEGAL DESCRIPTION
APN 043-202-14
541 E. LOCUST STREET

Lot 18 in Block 48 of Brier and Keeney's Addition, according to the Official Map or Plat thereof, filed for record October 6, 1903 in Vol. 3 of Maps and Plats, Page 20, San Joaquin County Records.